

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HENRY L. HARRIS,	)	
	)	
Plaintiff(s),	)	No. C 05-1286 BZ
	)	
v.	)	
	)	
JOHN E. POTTER, U.S.	)	<b>ORDER DENYING SUMMARY</b>
Postmaster General,	)	<b>JUDGMENT</b>
	)	
Defendant(s).	)	
	)	
	)	

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Having reviewed the extensive record submitted by both sides and following oral argument, **IT IS HEREBY ORDERED** that defendant's motion for summary judgment is **DENIED**. The court finds that there are too many disputed issues of material facts and too many questions about the reliability of the record to warrant the granting of summary judgment. For example, the record is confused about whether the Human Resources department had an overtime budget during the relevant time; and if it did, how and to whom any of those overtime funds were distributed; whether plaintiff's

1 department follows a practice or policy of offering extra  
2 hours first to workers outside of that department to find non-  
3 overtime workers before incurring overtime and assigning those  
4 extra hours to Training and Development employees; whether Mr.  
5 Ward was working overtime when he was assigned to Training and  
6 Development; whether Human Resources or Mr. Ward's department,  
7 Transportation and Networks ("Transportation") paid his salary  
8 while he was training; whether Mr. Ward was being paid  
9 overtime by his department, Transportation, so he could work  
10 on a non-overtime basis in plaintiff's department; and whether  
11 plaintiff's overtime eligibility is subject to rules which  
12 govern Motor Vehicle Craft employees throughout defendant's  
13 facility or is subject to the overtime budget of his  
14 department.

15 That said, the court is not satisfied that the best way  
16 of addressing these issues is by having a full trial on the  
17 merits. Accordingly, pursuant to Federal Rules of Civil  
18 Procedure 16, 42(b), 43(e) and 56(d), **IT IS ORDERED** as  
19 follows:

20 1. The trial presently scheduled for **June 12, 2006** is  
21 **VACATED**.

22 2. An evidentiary hearing is scheduled for **June 12, 2006**  
23 **at 10:00 a.m.** in Courtroom G, 15th Floor, Federal Building,  
24 450 Golden Gate Avenue, San Francisco, California 94102.

25 3. The hearing will be limited to the resolution of the  
26 following issues:

27 When in 2003 defendant allowed Mr. Ward to work in  
28 plaintiff's department and when defendant did not allow

1 plaintiff to sign the Transportation department's overtime  
2 lists and did not give plaintiff overtime work even when  
3 plaintiff did sign those lists, as plaintiff claims:

4 a. Did plaintiff experience an adverse employment  
5 action; and

6 b. Did defendant have legitimate non-retaliatory  
7 reasons for denying plaintiff overtime work in 2003?

8 Once the court resolves these issues, the court will  
9 schedule further trial proceedings as necessary.

10 4. For purposes of the evidentiary hearing only, the  
11 burden of presenting evidence will be placed on defendant  
12 initially. Plaintiff's ultimate burden of persuading the  
13 court by a preponderance of the evidence that defendant  
14 retaliated against him is unchanged.

15 5. By **May 17, 2006** defendant shall comply with all  
16 aspects of this court's pretrial scheduling order dated  
17 **September 23, 2005** and order amending the scheduling order  
18 dated **February 2, 2006**, insofar as the issues discussed in  
19 paragraph 3 are concerned.

20 6. If plaintiff wishes to lodge additional exhibits with  
21 respect to the issues discussed in paragraph 3, he may do so  
22 by **May 22, 2006**.

23 7. The pretrial conference presently scheduled for **June**  
24 **6, 2006** is **VACATED** and in its stead, a pre-hearing conference  
25 is scheduled for **June 6, 2006 at 4:00 p.m.** in Courtroom G,

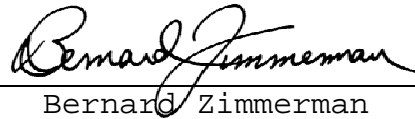
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1 15th Floor, Federal Building, 450 Golden Gate Avenue, San  
2 Francisco, California 94102.

3 Dated: May 11, 2006

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5 Bernard Zimmerman  
6 United States Magistrate Judge

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